

1999

North Dakota Office of State Tax Commissioner

Income tax update

News and developments for tax practitioners

Legislative edition

June 1999

*A publication
of the
Income and Oil
Taxes Division*

*Rick Clayburgh
Tax Commissioner*

Electronic filing and payment option for employers is set to go 2nd quarter

On May 13, 1999, a brochure explaining North Dakota's new Withholding Telefile System was mailed to approximately 17,000 registered employers currently filing and paying their state income tax withholding on a quarterly basis. About 7,000 additional brochures will be mailed later this year to those registered employers filing and paying on an annual basis.

North Dakota's Withholding Telefile System gives employers the option to file and pay their state income tax withholding by using a touch-tone telephone. This option is available to all registered employers at no cost to them.

To use this option, all an employer has to do is fill out an application, Form 301-EF, and submit it along with a voided check to the Office of State Tax Commissioner. Upon acceptance of the application, a handbook entitled *Withholding E-File Handbook* containing instructions on how to telefile will be sent to the employer.

Using the system is easy and fast. The employer accesses the system by dialing a special toll-free

number. Using the number keypad on the phone, the employer "completes" the withholding return by answering a series of questions. The system guides the employer through the entire process.

After confirming the answers provided by the employer, the system will automatically withdraw the proper amount from the employer's bank account on the day specified by the employer. The withdrawal is made by means of an automated clearing house (ACH) debit transaction. At the end of the call, the employer will receive a confirmation number to verify the transaction.

The North Dakota Withholding Telefile System is accessible 24 hours a day, 7 days a week. Both the return and payment will be deemed timely made if the call is completed by midnight (Central Time) on the applicable due date.

For more information, call the Withholding Section toll free at 1-877-638-2966. The speech or hearing impaired may call toll free through Relay North Dakota at 1-800-366-6888 (ask for 1-877-638-2966).

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First year of Federal/State Electronic Tax Filing participation is successful

For the 1998 tax year, just over 13,700 North Dakota individual income tax returns were filed through the IRS's Federal/State Electronic Tax Filing Program. In spite of the startup in late 1998, the first year was successful. The processing went smoothly, and taxpayers expecting refunds generally received them within a week of filing.

The Tax Department's capability to participate in the IRS's electronic filing program did not become certain until late in 1998, resulting in a number of software companies being unable to include North Dakota in their Federal/State Electronic Tax Filing software packages for the 1998 tax filing season. This undoubtedly affected the number of potential electronic filers.

The following companies included North Dakota in their Federal/State Electronic Tax Filing software packages for 1998: Drake, Orrtax, Xpress Software, Universal Tax Systems, H & R Block, and Jackson Hewitt Tax Service.

The number of returns filed under this program is expected to significantly increase for the 1999 tax year, especially if Intuit, Tax and Accounting Software, and TaxByte join the ranks of companies supporting North Dakota in their Federal/State Electronic Tax Filing software packages.

If you have questions about the Federal/State Electronic Tax Filing Program, call Rebecca Herrmann at (701)328-3598 or toll free (within North Dakota) at 1-800-638-2901.

New logo!

This logo identifies North Dakota's electronic tax filing and payment options—



Wrap-up of 1999 legislation affecting North Dakota income and financial institution taxes

House Bill 1106

Technical corrections

This bill made two technical corrections to North Dakota income tax law—(1) Obsolete references to the Myron G. Nelson Fund, Inc., were removed; and, (2) Language referencing a federal offer-in-compromise was corrected.

Effective: August 1, 1999.

House Bill 1112

Withholding bond or deposit

This bill removed the precondition that an employer who has not continuously maintained a domicile in North Dakota for one calendar year must either make a cash deposit or post a bond or undertaking executed by a surety company. In its place, the bill gave the tax commissioner the discretion as to when to require an employer to make a cash deposit or post a bond or undertaking.

Effective: August 1, 1999.

House Bill 1113

Short-form method of filing

This bill rewrote the provision defining "federal income tax liability" for purposes of the short form method of filing for individuals, estates and trusts. In addition, three federal taxes are now excluded in determining the federal income tax liability in the case of a nonresident filer.

See separate article on page 3 for details.

Effective: August 1, 1999.

House Bill 1307

Refund intercept program

This bill expanded the income tax refund intercept program to add the Industrial Commission (in its capacity as the state housing finance agency) and any housing authority in North Dakota to the list of agencies whose debts may be repaid using an individual debtor's state income tax refund. For purposes of submitting debtor information, one

of the housing authorities must be selected to submit all claims to the Tax Department.

Effective: August 1, 1999.

House Bill 1383

Financial institution tax credit

This bill authorized a financial institution or a group of financial institutions to set up a fund from which to make loans to finance housing development projects, and created a new credit against the financial institution tax for making or participating in a loan from the fund.

The credit is equal to the excess of (1) the interest that would have been earned on the loan by applying an interest rate equal to a comparable treasury security interest rate plus 3% over (2) the interest actually earned on the loan. The maximum credit allowed per year is equal to the interest that would have been earned by applying an interest rate of 3%. No more than \$750,000 of aggregate credits are allowed per year.

Effective: First four taxable years beginning after December 31, 1998.

House Bill 1474

Family member care tax credit

This bill increased some of the taxable income thresholds limiting the family member care credit created in 1997.

The amount of federal taxable income a qualified family member may have was increased from \$15,000 to \$20,000 for unmarried persons, and from \$30,000 to \$35,000 for married persons.

The amount of federal taxable income over which the credit percentage of 30% begins to phase down to 20% was increased from \$25,000 to \$35,000 in the case of married taxpayers filing a joint return.

The amount of federal taxable income over which the credit is reduced dollar-for-dollar was increased from \$50,000 to \$70,000 in the case of married taxpayers filing a joint return.

The bill also provided an exception to the

confidentiality provisions for purposes of administering the credit provisions when two or more taxpayers incur qualified care expenses for the same qualifying family member.

Effective: Taxable years beginning after December 31, 1998.

House Bill 1492

Renaissance zones

This bill authorized a city to apply to the North Dakota Office of Intergovernmental Assistance to designate a portion of the city as a "renaissance zone," the purpose of which is to promote development and improvement of residential and commercial properties in the zone.

A number of income and property tax exemptions are provided as incentives to purchase or lease residential or commercial property as part of an approved project in a zone. Also, two tax credits are provided for income tax and financial institution tax purposes as investment incentives—one for investing in a renaissance fund corporation established by a city to raise funds to finance projects in the zone, and another for investing in the preservation or renovation of historic property in the zone.

For individuals, the income tax exemption and credits are allowed under both the short-form method (Form 37-S) and long-form method (Form 37).

Effective: Generally, taxable years beginning after December 31, 1998. Investments for the historic renovation and preservation credit must be made between January 1, 2000, and December 31, 2004. Investments or activities occurring before January 1, 1999, are not eligible for tax benefits.

Income tax update is a publication of the Income and Oil Taxes Division, North Dakota Office of State Tax Commissioner, State Capitol, 600 East Boulevard Avenue, Bismarck, ND 58505-0599.

It is published annually in October and after each legislative session in June. It is intended for tax professionals and other persons interested in developments, updates and other information about North Dakota's income and financial institution tax laws, rules and administrative policies.

It is mailed free-of-charge to all persons on the Division's practitioners' mailing list. To get on the list, call (701)328-3450 or (toll free within North

Senate Bill 2096

New jobs training program

This bill expanded the New Jobs Training Program created in 1993 to allow the new jobs credit from withholding to be used to pay a qualified employer's out-of-pocket training expenses. However, for this purpose, only 60% of the income tax withholding dollars may be used to pay the training expenses. *If interested in this program, contact Job Service North Dakota for application information.*

Effective: August 1, 1999.

Senate Bill 2102

Equalization of interest rates

This bill equalized the interest rates on assessments and refunds by increasing the rate of interest on refunds to match the interest rate on assessments. *See separate article on this page for details.*

Effective: Retroactive to taxable years beginning after December 31, 1997.

Senate Bill 2155

Corporate officer liability

This bill changed the tobacco, income, sales, use, motor vehicle fuels, and special fuels tax provisions covering the personal liability of corporate officers and LLC governors and managers.

In addition to making the law uniform for all of these taxes, it provided that a cash deposit may be made, or a bond or undertaking executed by a surety company may be posted, in lieu of the officers or governors and managers being personally liable. A corporation or LLC interested in making this election must contact the Office of State Tax Commissioner for information and procedures.

Effective: August 1, 1999.

Would you like a copy of a 1999 bill?

If you have access to the Internet, you can download a copy of any of the bills summarized in this newsletter from the North Dakota Legislative Branch home page.

The address is:

Interest rates on assessments and refunds are equalized starting in '98

The 1999 North Dakota Legislature passed legislation that equalized the interest rates on assessments and refunds by changing the interest rate on refunds from 10% per year to 1% per month or a fraction of a month.

Senate Bill 2102, which was introduced at the request of the Office of State Tax Commissioner to replace portions of legislation passed in 1997 (S.L. 1997, ch. 493; House Bill 1332), was passed unanimously by the legislature. The legislation is effective for taxable years beginning after December 31, 1997, which means the change first affects the 1998 taxable year. The change does not affect assessments and refunds for taxable years beginning before January 1, 1998.

Interest on a refund arising from an

amended return (filed for other than a net operating loss or capital loss carryback) starts accruing in the month following the due date (without extension) of the original return.

The legislation also changed the law covering interest on assessments to provide that if an assessment is made for a taxable year for which an overpayment of estimated tax was refunded, interest on the portion of the assessment equal to or less than the refund begins to accrue from the date the refund was issued.

The portions of the 1997 legislation replaced by Senate Bill 2102 also would have equalized the interest rates, but only where an assessment time period and a refund time period overlapped. This would have required the tracking of all

Changes to short-form filing method for individuals, estates and trusts

Two bills passed by the 1999 North Dakota Legislature made a number of changes to the provisions of North Dakota Century Code § 57-38-30.3, the statutory section governing the short-form method of filing for individuals, estates and trusts.

Definition of federal income tax liability

House Bill 1113 amended subsection 5 of section 57-38-30.3 to restructure and clarify the subsection's language and to make a couple of substantive changes.

The primary purpose of this bill was to rewrite the definition of "federal income tax liability," the starting point in calculating the tax under the short-form method. The rewrite simplified the content and structure of the definition, and clarified what is included in it.

In addition, the following substantive changes were made to the definition's language:

1. The language allowing the federal investment tax credit (ITC) to offset the federal alternative minimum tax (AMT) was removed. Due to a change in federal income tax law that altered how the ITC affects the AMT calculation, there is no longer a need for this offset.
2. In the case of a nonresident filer, the following federal taxes are no longer

required to be included in the federal income tax liability:

- ! Tax on a lump-sum distribution under I.R.C. § 402, if the amount of the distribution is exempt from North Dakota income tax;
- ! Tax on excess contributions to an IRA, medical savings account, and certain I.R.C. § 403(b) and annuity contracts under I.R.C. § 4973(a); and,
- ! Tax on excess accumulations in a qualified retirement plan under I.R.C. § 4974(a).

These taxes were excluded to remove discriminatory and constitutional concerns with respect to them.

New exemptions and credits

House Bill 1492, the "renaissance zone" bill, included a section that added a new subsection to N.D.C.C. § 57-38-30.3. The new subsection provides that the exemptions and credits allowed for renaissance zone investments may be

Practical stuff . . .

Handling of 5-year C/B for farmers' NOLs

The Tax and Trade Relief Extension Act of 1998 provided for a new 5-year carryback period for farmers' net operating losses, effective for NOLs arising in tax years beginning after December 31, 1997. A number of practitioners have inquired about how the new period is handled under North Dakota income tax law.

North Dakota income tax law recognizes the new 5-year carryback period. N.D.C.C. § 57-38-40 provides that a taxpayer may file a claim for refund of an overpayment of tax resulting from the carryback of a net operating loss within three years after the prescribed due date (including extensions) for filing the return for the loss year. This provision doesn't concern itself with the carryback period—whether it is 2, 3 or 5 years—it simply provides for a period following the loss year in which a claim for refund for the carryback year may be filed.

Missing SSNs for spouses and incorrect addresses delay processing and refunds

The processing of some 1998 individual returns prepared by practitioners was delayed due to the omission of the spouse's social security number. The problem was noted on computer-generated returns, so the problem may be attributable to the tax preparation software being used.

Please make sure that the social security numbers of *both* spouses are entered in the appropriate boxes at the top of the North Dakota individual income tax return. This applies whether the return is prepared on a joint or separate basis.

Also, refund checks were returned to this office because of incorrect addresses on the individual returns. Please double-check the addresses of clients before filing their returns.

Error in income tax forms: Form 4970 tax omitted

The federal tax on an accumulation distribution from a trust—computed on Federal Form 4970—is included in the federal income tax liability under the North Dakota short-form method of filing for

individuals, estates and trusts. It is also included in the calculation of the federal income tax deduction under the North Dakota long-form method of filing for the same taxpayers.

Due to an oversight, this tax was mistakenly left out of the short- and long-form instructions for the 1996 through 1998 individual returns, and was left out of the short- and long-form instructions for the 1996 and 1997 fiduciary returns. (The error was caught in time to correct it in the instructions to the 1998 fiduciary return.)

The oversight occurred in 1996 when the IRS revised the instructions to the Forms 1040 and 1041 to make the accumulation distribution tax a write-in item on the "Total tax" lines of those forms. The 1999 North Dakota individual return will be corrected to include the Form 4970 tax. We apologize for any problem this oversight may cause practitioners and their clients.

Schedule FC: Spouse as qualifying family member

Note: The dollar amounts in this article are taken from the 1998 Schedule FC.

There has been confusion over the application of the federal taxable income limitations when calculating the family member care credit on Schedule FC. This has occurred only when one spouse claims the credit for the care of the other spouse.

The confusion is over the interaction of the \$30,000 federal taxable income limitation (*on line 3, Schedule FC*) and the \$50,000 federal taxable income limitation (*on line 11, Schedule FC*). If a spouse claims the credit for the care of the other spouse, the \$50,000 limitation on line 11 will not come into play. This happens because the combined federal taxable incomes of both spouses cannot exceed \$30,000 to satisfy the qualifying family member criteria on line 3. In short, the \$30,000 income ceiling for qualification purposes in Part 1 of the schedule effectively negates the credit limitation calculation on lines 11 and 12 in Part 2 of the schedule.

This application of the two income ceilings is supported by the law and its history. Fortunately, it's a concern only where one spouse claims the credit for the

Your questions and comments are welcome

Your day-to-day, hands-on experience in the accounting and tax environments, and your dealings with North Dakota taxpayers, make you a valuable resource.

Your input helps us to provide the best service possible, and we invite you to contact us any time.

Thank you.

Where to reach us...

Phone numbers

General toll free **1-800-638-2901**
(from within North Dakota)

Individual income tax	(701)328-3450
Income tax withholding	(701)328-3125
Withholding toll free	1-877-638-2966
Corporation income tax	(701)328-2046
Sales and special taxes*	(701)328-3470

(*Includes sales, use, motor fuels, estate, city lodging, highway contract privilege, and music or dramatico-musical composition performing rights taxes.)

Oil and gas taxes	(701)328-2014
Property tax	(701)328-3127
Commissioner's office	(701)328-2770

Speech/hearing impaired—
Call Relay North Dakota 1-800-366-6888
(ask for 1-800-638-2901)

Internet web site www.state.nd.us/taxdpt

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Comments?

If you have suggestions for articles, or would like to comment on this publication, you may direct them to: Joseph Becker